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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,234	10/30/2003	Deirdre R. Meldrum	UWOTL126696	2313

26389 7590 10/11/2006

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EXAMINER

LEVKOVICH, NATALIA A

ART UNIT PAPER NUMBER

1743

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/698,234

Applicant(s)

MELDRUM ET AL.

Examiner

Natalia Levkovich

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) 1-25 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendments and remarks filed on 07/03/2006 have been acknowledged by the Examiner.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in the 01/03/2006 Office Action.

Claim Rejections - 35 USC § 112

3. The 35 U.S.C. 112, second paragraph, rejection of claims 1-22 is withdrawn in view of latest amendments.

Claim Rejections - 35 USC § 103

4. Claims 1-5, 9-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over David et al. (US 20020189529).
See the appropriate paragraphs of the 01/03/2006 Office Action.
5. Claims 6 and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over David in view of Kimel (US 6551464).
See the appropriate paragraphs of the 01/03/2006 Office Action.

6. Claims 7-8 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over David in view of Weigl et al. (US 20020025279).

See the appropriate paragraphs of the 01/03/2006 Office Action.

7. Claims 11-12 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over David in view of McDevitt et al. (US 20020160363).

See the appropriate paragraphs of the 01/03/2006 Office Action.

Response to Arguments

8. The declaration filed on 07/03/2006 under 37 CFR 1.131 has been considered but is ineffective to overcome the David et al. reference.

The declaration is insufficient to show reduction to practice of the claimed invention prior to the effective date of the David et al. reference. All the claims recite sealing the capillary tubes. The evidence submitted in support of the declaration indicates that the capillary tubes will be sealed in development of the invention happening subsequent to the date of the submitted evidence. As such, this evidence cannot be considered evidence of reduction to practice. There is no data which shows results with sealed capillary tubes. If the evidence is considered as evidence of conception, then Applicant must also show diligence up to the filing date of the application. See M.P.E.P. section 715.07. Applicant's declaration and evidentiary submission does not show diligence.

Applicant argues that the claims of David et al. are directed to a method for determining crystallization conditions for a protein, 'whereas the claims of the present application are directed to "a method of preparing and handling" protein samples ...or a reagent sample'. Examiner notes that the method of David encompasses the method of the instant application, as claimed (see the appropriate paragraphs of the 01/03/2006 Office Action.).

In the evidence submitted with the declaration, several references to prior art were included, but no citation listing corresponding to these references was provided. If available, Examiner is interested in considering this citation list, or the actual references.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jill Warden
Supervisory Patent Examiner
Technology Center 1700